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Attorneys for Plaintiffs PATRICK CONNALLY  
 and DISABILITY RIGHTS ENFORCEMENT,  
 EDUCATION SERVICES

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

PATRICK CONNALLY, an individual; and )  
 DISABILITY RIGHTS, ENFORCEMENT, )  
 EDUCATION, SERVICES:HELPING YOU )  
 HELP OTHERS, a California public benefit )  
 corporation,

Plaintiffs,

v.

FRANK'S FREEZE; MATTHEW  
 CAVIGLIA, as trustee of the RONALD &  
 Nanci CAVIGLIA 2003 REVOCABLE  
 TRUST; and MYUNG SHIN KIM and HYE )  
 SEO KIM, a married partnership dba )  
 FRANK'S FREEZE,

Defendants.

CASE NO. C05-2239 JCS  
 CONSENT DECREE

**WHEREAS**, plaintiffs Patrick Connally and Disability Rights Enforcement, Education Services ("DREES") have filed an action in the United States District Court, Northern District of California, alleging claims for injunctive relief and damages under the Americans with Disabilities Act of 1990 ("ADA") (42 U.S.C. §12101, *et seq.*), California Health & Safety Code Sections 19955, *et seq.*, and California Civil Code Sections 51, 51.5 and 54, *et seq.*, arising out of plaintiff Patrick Connally's visit to the public accommodation known as Frank's Freeze in Cotati, California, on January 27, 2005; and

1       **WHEREAS**, defendant Matthew Caviglia, as trustee of the Ronald & Nanci Caviglia  
 2 2003 Revocable Trust, owns the real property located at 7764 Old Redwood Hwy., Cotati,  
 3 California, known as Frank's Freeze; and

4       **WHEREAS**, defendants Myung Shin Kim and Hye Seo Kim, a married partnership dba  
 5 Frank's Freeze, operate the business known as Frank's Freeze; and

6       **WHEREAS**, plaintiffs Patrick Connally and DREES and defendants Matthew Caviglia,  
 7 Myung Shin Kim and Hye Seo Kim, have agreed upon a settlement pursuant to which  
 8 defendants will perform certain remedial improvements at the premises known as Frank's  
 9 Freeze; and

10       **WHEREAS**, plaintiffs Patrick Connally and DREES and defendants Matthew Caviglia,  
 11 Myung Shin Kim and Hye Seo Kim agree that the settlement of this claim is made in good faith  
 12 and in an effort to avoid expensive and protracted litigation, but without any admission or  
 13 finding of liability or fault as to any allegation or matter;

14       **NOW, THEREFORE, it is ORDERED, ADJUDGED AND DECREED as follows:**

#### 15                               **I. JURISDICTION**

16       A.     The Court has jurisdiction over the subject matter of and the parties to this  
 17 Consent Decree pursuant to the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C.  
 18 §122101, *et seq.*

19       B.     Defendants Matthew Caviglia, Myung Shin Kim and Hye Seo Kim do not contest  
 20 and agree not to contest the Court's jurisdiction to enter into and enforce this Consent Decree.

#### 21                               **II. DENIAL OF LIABILITY**

22       Defendants Matthew Caviglia, Myung Shin Kim and Hye Seo Kim deny any and all  
 23 legal or equitable liability under any federal, state or local statute, regulation or ordinance, or  
 24 the common law, for any damages or claims caused by or arising out of the of conditions of the  
 25 premises known as Frank's Freeze. By entering into this Consent Decree, or by taking any  
 26 action in accordance with it, defendants Matthew Caviglia, Myung Shin Kim and Hye Seo Kim  
 27 do not admit any allegations contained herein or in the complaint, nor do defendants  
 28

admit any liability for any purpose or admit any issue of law or fact or any responsibility for the alleged noncompliance of the subject premises with the ADA, the Americans with Disabilities Act Accessibility Guidelines ("ADAAG"), Title 24 of the California Building Standards Code, or any other state or federal statute or regulation.

### III. PURPOSE

The purpose of this Consent Decree is to resolve amicably the existing dispute between the parties hereto as to whether remedial improvements at the subject premises are necessary to provide access to persons with disabilities and to settle the claims asserted against defendants in the complaint filed in this matter.

### IV. BINDING EFFECT

A. The undersigned plaintiffs certify that they are fully authorized to enter into the terms and conditions of this Decree and that they have not assigned, transferred or purported to assign or transfer, to any person or entity any claim or other matter which is the subject of this Decree.

B. The undersigned defendants Myung Shin Kim and Hye Seo Kim certify that they are fully authorized to enter into the terms and conditions of this Decree and that they are fully authorized to execute this document and legally bind themselves to the provisions of this Decree.

C. The undersigned defendant Matthew Caviglia, as trustee of the Ronald & Nanci Caviglia 2003 Revocable Trust, certifies that he is fully authorized to enter into the terms and conditions of this Decree and that he is fully authorized to execute this document and legally bind the Ronald & Nanci Caviglia 2003 Revocable Trust to the provisions of this Decree.

### V. WORK TO BE PERFORMED

A. In general, defendants Matthew Caviglia, as trustee of the Ronald & Nanci Caviglia 2003 Revocable Trust, and Myung Shin Kim and Hye Seo Kim, dba Frank's Freeze, shall make the premises known as Frank's Freeze accessible to persons with disabilities in accordance with ADAAG or Title 24 of the California Code of Regulations, whichever is more restrictive. Specifically, defendants Matthew Caviglia, as trustee of the Ronald & Nanci

1 Caviglia 2003 Revocable Trust, and Myung Shin Kim and Hye Seo Kim, dba Frank's Freeze  
2 shall undertake the following remedial measures, which constitute the removal of architectural  
3 barriers as referred to in the ADA and ADAAG, to persons with disabilities, including:

- 4 1. Provision of one van accessible designated disabled parking space,  
5 complete with all required signage and pavement markings;
- 6 2. Provision of an sign bearing the International Symbol of Accessibility  
7 ("ISA") at the rear entrance;
- 8 3. Conversion of the existing men's and women's restrooms to a single  
9 accessible unisex toilet room which shall include:
  - 10 a. an entrance door with a minimum of 32" clear width and fully-  
11 accessible (levered) opening hardware;
  - 12 b. a raised toilet seat which measures a between 17"-19" from the  
13 floor;
  - 14 c. grab bars to the rear and side of the toilet;
  - 15 d. an accessible sink which complies with all height and knee-  
16 clearance requirements, and which is equipped with levered  
17 faucet hardware and insulated hot water and drain pipes;
  - 18 e. paper towel and toilet seat cover dispensers which are mounted so  
19 that all operable parts are no higher than 40" and are  
20 unobstructed by other fixtures, i.e. the sink or toilet.

21 B. The work to be performed pursuant to this Consent decree shall be completed  
22 within twelve (12) months of the signing of this Decree. However, if the work to be  
23 performed cannot be completed within twelve (12) months despite the good faith efforts of  
24 defendants, the time for completion will be extended in six (6) month intervals upon a showing  
25 of good cause.

26 C. The remedial work set forth herein is determined by the Court to be that work  
27 which is "readily achievable" under the standards established by the Americans with  
28

1 Disabilities Act of 1990, and accordingly, the Unruh Civil Rights Act and the California  
2 Disabled Persons Act.

3 D. In further keeping with State law, defendants Myung Shin Kim and Hye Seo  
4 Kim, dba Frank's Freeze shall ensure that the number of employees on duty at Frank's  
5 Freeze at any given time shall not exceed four (4).

#### 6 VI. MONETARY PAYMENT

7 A. In full and complete settlement of plaintiffs' claims against defendants, it is  
8 further agreed that defendants Matthew Caviglia, as trustee of the Ronald & Nanci Caviglia  
9 2003 Revocable Trust, and Myung Shin Kim and Hye Seo Kim, dba Frank's Freeze, shall pay  
10 to plaintiffs the sum of Twenty Thousand Dollars (\$20,000) in resolution of all claims,  
11 demands, damages, losses of any kind, liabilities, bodily injury, emotional distress, actions and  
12 causes of action of every kind and nature, including attorneys' fees, costs and litigation expenses.

13 B. Payment of the above amounts shall be made within ten (10) days of the date  
14 that the Court signs and serves this Consent Decree.

#### 15 VII. MODIFICATION

16 There shall be no modification of this Consent Decree without written approval of both  
17 parties hereto.

#### 18 VIII. EFFECTIVE DATE

19 This Consent Decree is effective upon the date of its entry by the Court.

#### 20 IX. CONTINUING JURISDICTION

21 The Court specifically retains jurisdiction over both the subject matter of and the parties  
22 to this action for the duration of this Consent Decree for the purpose of issuing such further  
23 orders or directions as may be necessary or appropriate to construe, implement, modify,  
24 enforce, terminate, or reinstate the terms of this Consent Decree, including but not limited to  
25 attorneys' fees, costs and litigation expenses incurred in enforcing this Agreement, or for any  
26 further relief as the interest of justice may require.

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**X. TERMINATION AND SATISFACTION**

A. Upon defendants completion of the work to be performed, as specified, pursuant to this Consent Decree, the Court's jurisdiction of this matter shall terminate unless the parties show good cause for the continuance of this Consent Decree.

The undersigned hereby consent to the foregoing Consent Decree.

Dated: April 26, 2006

  
Plaintiff Patrick Connally, individually and as  
President of Plaintiff Disability Rights  
Enforcement, Education Services

Dated: \_\_\_\_\_, 2006

Defendant Matthew Caviglia, as trustee of the  
Ronald & Nanci Caviglia 2003 Revocable Trust

Dated: \_\_\_\_\_, 2006

Myung Shin Kim

Dated: \_\_\_\_\_, 2006

Hye Seo Kim

**APPROVED AS TO FORM:**

Dated: April 26, 2006

THOMAS E. FRANKOVICH,  
A PROFESSIONAL LAW CORPORATION

By: 

Jennifer L. Steneberg  
Attorney for Plaintiffs PATRICK CONNALLY  
and DISABILITY RIGHTS ENFORCEMENT,  
EDUCATION SERVICES: HELPING YOU  
HELP OTHERS

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Dated: \_\_\_\_\_, 2006

Plaintiff Patrick Connally, individually and as  
President of Plaintiff Disability Rights  
Enforcement, Education Services

Dated: 5/17, 2006

  
Defendant Matthew Caviglia, as trustee of the  
Ronald & Nanci Caviglia 2003 Revocable Trust

Dated: \_\_\_\_\_, 2006

Myung Shin Kim

Dated: \_\_\_\_\_, 2006

Hye Seo Kim

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_, 2006

THOMAS E. FRANKOVICH,  
A PROFESSIONAL LAW CORPORATION

By: \_\_\_\_\_

Jennifer L. Steneberg  
Attorney for Plaintiffs PATRICK CONNALLY  
and DISABILITY RIGHTS ENFORCEMENT,  
EDUCATION SERVICES; HELPING YOU  
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CONSENT DECREE

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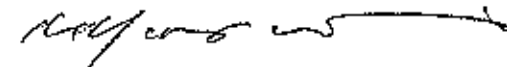
Dated: \_\_\_\_\_, 2006

Plaintiff Patrick Connally, individually and as  
President of Plaintiff Disability Rights  
Enforcement, Education Services

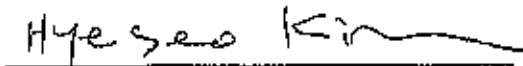
Dated: 5/17, 2006

  
Defendant Matthew Caviglia, as trustee of the  
Ronald & Nanci Caviglia 2003 Revocable Trust

Dated: 5/25, 2006

  
Myung Shin Kim

Dated: 5/25, 2006

  
Hye Seo Kim

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_, 2006

THOMAS E. FRANKOVICH,  
A PROFESSIONAL LAW CORPORATION

By: \_\_\_\_\_  
Jennifer L. Steneberg  
Attorney for Plaintiffs PATRICK CONNALLY  
and DISABILITY RIGHTS ENFORCEMENT,  
EDUCATION SERVICES: HELPING YOU  
HELP OTHERS

///

CONSENT DECREE



1 Dated: 5/22, 2006

GEARY SHEA O'DONNELL & GRATTON

2  
3 By: [Signature]  
John Alexander Holdredge  
Attorney for Defendant MATTHEW CAVIGLIA

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5 Dated: \_\_\_\_\_, 2006

BEYERS COSTIN

6  
7 By: \_\_\_\_\_  
Stephen Duane Perry  
Attorneys for Defendants MYUNG SHIN KIM and  
HYE SEO KIM

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10 ORDER

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12 IT IS SO ORDERED.

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14 Dated: \_\_\_\_\_, 2006

Hon. Joseph C. Spero  
United States Magistrate Judge

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CONSENT DECREE

1 Dated: \_\_\_\_\_, 2006

GEARY SHEA O' DONNELL & GRATTON

2  
3 By: \_\_\_\_\_  
4 John Alexander Holdredge  
Attorneys for Defendant MATTHEW CAVIGLIA

5 Dated: May 25, 2006

BEYERS COSTIN

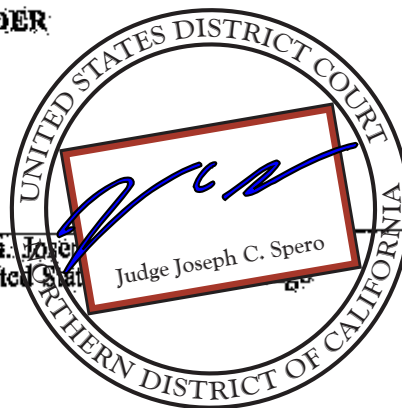
6  
7 By: [Signature]  
8 Stephen Duane Perry  
9 Attorneys for Defendants MYUNG SHIN KIM and  
HYE SEO KIM

10  
11 ORDER

12 IT IS SO ORDERED.

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14 Dated: May 31, 2006

15 Hon. Jose  
16 United States



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CONSENT DECREE